FEB 24 1945

No. 979

In the Supreme Court of the United States

OCTOBER TERM, 1944

DEFENSE PLANT CORPORATION, APPELLANT

vs.

COUNTY OF BEAVER, PENNSYLVANIA

APPEAL FROM THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

STATEMENT AS TO JURISDICTION

In the Supreme Court of Pennsylvania, Western District

No. 201—March Term, 1944

IN RE: APPEAL OF DEFENSE PLANT CORPORATION FROM ASSESSMENT OF PROPERTY IN THE TOWNSHIP OF BOROUGH, COUNTY OF BEAVER, PENNSYLVANIA

APPEAL OF DEFENSE PLANT CORPORATION

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, and with Rule 86 of the Supreme Court of the Commonwealth of Pennsylvania, the above-named Appellant herewith submits its separate statement showing the basis of the jurisdiction of the Supreme Court of the United States to entertain an appeal in this cause:

(a) The date of the judgment entered by the Supreme Court of Pennsylvania is October 31, 1944. A motion for reargument was filed on November 9, 1944 (R.), and was denied on November 17, 1944 (R.). The petition for appeal was filed in the Supreme Court of Pennsylvania on

(b) The statutory jurisdiction of the Supreme Court of the United States to review by direct appeal the judgment complained of is conferred by Section 237 (a) of the Judicial Code as amended by the Act of February 13, 1925.

(c) *State Statute Involved.*—The Statute of the Commonwealth of Pennsylvania which was held to be valid but which the Appellant contends is repugnant to the Constitution and Laws of the United States is the statute providing for the assessment and collection of real estate taxes, Act of May 22, 1933, P. L. 853. (72 P. S. Sec. 5020–1 et seq.), and particularly Section 201 thereof. Section 201 provides as follows:

Subjects of Taxation Enumerated.—The followings subjects and property shall, as hereinafter provided, be valued and assessed, and subject to taxation for all county, city, borough, town, township, school and poor purposes at the annual rate:

(a) All real estate, to wit: Houses, lands, lots of ground and ground rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tanyards, fisheries, and ferries, wharves and all other real estate not exempt by law from taxation.

* * * * *

(d) *Nature of the Case.*—In 1941 Defense Plant Corporation, a corporation created by Reconstruction Finance Corporation pursuant to Act of Congress, acquired certain land in Borough

Township, Beaver County, Pennsylvania (R. 12–a). Thereafter it constructed buildings thereon, caused machinery to be installed therein and leased the establishment thus erected and equipped to Curtiss-Wright Corporation to enable said corporation to perform its war contracts with the United States Government for the manufacture and furnishing of aircraft propellers (R. 14–a).

In 1942 the Borough Township Assessor assessed said property for the 1943–1945 triennial period and included in said assessment the item of machinery assessed at $388,000 (R. 15–a). In March 1943 Defense Plant Corporation appealed to the County Commissioners of Beaver County, sitting as a Board of Revision, from such assessment made upon said machinery, but said Board of Revision sustained the assessment and dismissed the appeal (R. 16–a). Thereupon Defense Plant Corporation took an appeal from such action to the Common Pleas Court of Beaver County and after introduction of an agreed statement of facts, presentation of testimony and argument, said court of June 7, 1944, entered an order dismissing the appeal and approving such assessment (R. 3–a). On June 26, 1944, such order was reaffirmed as the order of the Common Pleas Court en banc (R. 4–a).

Defense Plant Corporation thereupon took a further appeal of the cause to the Supreme Court

of Pennsylvania and said court on October 31, 1944, entered judgment affirming the order of the Court of Common Pleas. A copy of the opinion and order of the Supreme Court of Pennsylvania is appended hereto.

(c) *The Federal Question and the Rulings thereon.*—Appellant initially based its appeal to the County Commissioners of Beaver County from the assessment in question on the ground—

> that the Pennsylvania Statutes, to the extent that they impose a tax on machinery and equipment owned by the Defense Plant Corporation are violative of the Constitution and Statutes of the United States (R. 7-a).

(A second ground of appeal to said Commissioners, namely that such assessment was erroneous by reason of the exemption under the Constitution and Statutes of Pennsylvania of public property used for a public purpose was later abandoned.)

In its appeal to the Court of Common Pleas of Beaver County Appellant's petition alleged that its machinery and equipment was personal property, not real property, that the action of the assessor and of the board of revision in assessing such machinery and equipment "denies the validity of Section 10 of the Reconstruction Finance Corporation Act as amended by the Act of June 10, 1941, aforesaid," and that the Pennsylvania Statutes for taxation of real estate, to the extent

that they impose taxes on such machinery and equipment,

> are invalid on the ground that they are repugnant to the Constitution of the United States, to wit the immunity of the United States and its instrumentalities from taxation by states or political subdivisions thereof and are repugnant to Section 10 of the Reconstruction Finance Corporation Act, as amended (R. 8–a).

Upon appeal from the decision of the Court of Common Pleas to the Supreme Court of Pennsylvania, the Appellant in its brief and in accordance with the requirements of the Rules of the Supreme Court of Pennsylvania, set forth its "Statement of Question Involved," including therein the following:

> 3. Are the Pennsylvania Statutes for taxation of real estate, to the extent that they impose taxes on machinery and equipment belonging to a Federal Agency, whose personal property has been declared exempt from local taxation by a Federal Statute, invalid as being repugnant to the Constitution and Laws of the United States? Answered negatively by the court below.

Both the Court of Common Pleas (R. 125–a et seq.) and the Supreme Court of Pennsylvania in this case (R.) have declared the meaning of the Pennsylvania tax statute hereinbefore quoted as including as a part of the real estate subject to assessment the machinery installed in

or "being an integrated part of the manufactory and so of the freehold." The Appellant has at no time sought to contest this construction by Pennsylvania courts of the Pennsylvania tax law. The contentions consistently made by Appellant, both by brief and at bar, in both courts are briefly as follows:

Since Defense Plant Corporation is a Federal Agency, all its property enjoys under the Federal Constitution a basic exemption from local taxes and accordingly Pennsylvania could impose taxes on any such property only by grace of the Federal Congress in expressly waiving such constitutional immunity. In the Reconstruction Finance Corporation Act of 1941, 15 U. S. C. Section 610, Congress declared that "real property" of Defense Plant Corporation and other designated Federal agencies should be subject to state and local taxes, but that "personal property" of such agencies should remain exempt from such taxes. The determination of the scope of these terms presents a purely Federal question, to be governed by considering the history of the legislation and of analogous acts of Congress, the rule of strict construction against taxability imposed by the basic constitutional immunity, and the necessity, in the face of conflicting local tax practices, of a uniform national definition of taxables and nontaxables of said agencies. In view of these considerations Appellant contended that Congress could not have

intended the scope of these terms to be determined by local legislators and tax administrators and that to avoid constitutional doubts as well as to achieve the necessary uniformity of tax practice all courts must construe "real property" in its narrowest and universally accepted sense. Since the Pennsylvania tax statute as construed by the Pennsylvania courts purported to authorize the assessment for real estate taxes of machinery and equipment located in a Pennsylvania mill or manufactory regardless of the character or mode of installation thereof, it was necessarily in conflict with the Act of Congress and with the Constitutional tax immunity with which said act was concerned.

The Court of Common Pleas, in rejecting the foregoing contentions and affirming the validity of the assessment, concluded that the scope of the term "real property" in Reconstruction Finance Corporation Act of 1941, supra, was to be determined solely by local property law. Thus the court says:

> Our conclusion is, that when the Act of Congress refers to real estate owned by such governmental agencies as Defense Plant Corporation as subject to state and local taxation, it means real estate within the definition of the law of the state in which the statute is sought to be applied; in other words in the instant case, the law of the State of Pennsylvania (R. 148-a).

The Supreme Court of Pennsylvania likewise rejected the foregoing contentions and approved the validity of the assessment made under the Pennsylvania statute, basing its conclusions on either of two alternative grounds. On the one hand it assumed Appellant's position to be that Congress intended "real property" to include whatever the majority of state courts deemed to be fixtures and then concluded such majority view to be in accordance with the Pennsylvania rule respecting machinery in mills and manufactories. On the other hand it recited the contention of Appellee that Congress must have intended the content of "real property" to be determined by the law of the taxing district. Accordingly the court concluded:

"In either view, we all agree the appeal fails." (R.). Thus both the Court of Common Pleas and the Supreme Court of Pennsylvania have denied the existence of immunity from local taxation which Appellant contends has been granted to its machinery both by Act of Congress and by the Federal Constitution and have validated the assessment made under authority of the Pennsylvania tax statute in contravention as Appellant contends, of the Constitution and Laws of the United States.

(f) *Cases Believed to Sustain Jurisdiction.*— The following decisions of the Supreme Court of the United States are believed to sustain its jurisdiction to entertain this appeal:

Standard Oil Company of California v. *Johnson*, 316 U. S. 481, 86 L. Ed. 1611, 62 S. C. 1168 (1942). Under a California statute a state tax was levied on the privilege of selling motor vehicle fuel, the statute, however, exempting fuel sold—

> to the Government of the United States or any department thereof for official use of said Government.

The state Supreme Court upheld a levy under the statute upon sales of fuel to post exchanges, therein determining that a post exchange was not "the Government of the United States or any department thereof." The ultimate Federal question thus involved was the character of post exchanges. If the California court was in error in concluding that post exchanges were not Federal instrumentalities, then the state law as construed and applied would be, as contended by the appellant, in contravention of the Federal Constitution. On the question of the right of appeal under the foregoing state of facts, the Supreme Court ruled at page 482:

> Since validity of the state statute as construed was drawn in question on the ground of its being repugnant to the Constitution, we think the case is properly here on appeal under Section 237 (a) of the Judicial Code.

Appellant submits that the analogy between the case just referred to and the present situation is clear. The ultimate Federal question now in-

volved is as to the character of the machinery of Defense Plant Corporation, that is whether such machinery is taxable real property or exempt personal property within the meaning to be attributed to those terms as used in the Act of Congress. If, as Appellant contends, the Pennsylvania courts are in error in concluding that Congress intended such machinery to be treated for tax purposes as real property, then the Pennsylvania tax statute purporting to authorize such assessment is repugnant both to the Federal Constitution and to the Laws of the United States.

Additional instances in which appeals or writs of error have been allowed by reason of the alleged repugnancy of state laws to the immunity granted by the Federal Constitution are found in *United States et al.* v. *Allegheny County*, 322 U. S. 174, 64 S. C. 908 (1944); *Lee et al.* v. *Osceola and Little River Road Improvement District*, 268 U. S. 643, 69 L. Ed. 1133, 45 S. C. 620 (1925); *Van Brocklin* v. *State of Tennessee*, 117 U. S. 151 (1886).

(g) *The Question is One of Substance.*—The Federal question decided by the Supreme Court of Pennsylvania is substantial and important. In Pennsylvania alone, with which the present litigation is directly concerned, Defense Plant Corporation owns very large investments in plants, plant sites and machinery and equipment. Up to the present time the tax practice in all except four

Pennsylvania counties in which such investments are located is to exclude from assessment of manufacturing establishments the machinery and equipment installed therein. But in the four excepted counties, that is the Counties of Allegheny, Beaver, Washington, and West Moreland, Defense Plant Corporation owns plant machinery and equipment which has been assessed for taxation under the Pennsylvania tax statute hereinbefore quoted in the aggregate sum of approximately $29,900,000. These assessments are all under appeal, the disposition of such appeals awaiting the outcome of the present litigation.

DEFENSE PLANT CORPORATION,
By STERLING NEWELL,
HENRY J. CRAWFORD,
WM. N. GATES,
SQUIRE, SANDERS & DEMPSEY,
Cleveland, Ohio,
HAROLD F. REED,
REED & EWING,
564 Third Street, Beaver, Pennsylvania,
By HAROLD F. REED.

Filed Jan. 26, 1945.
Supreme Court,
Western District.

I have approved the filing of this Statement as to Jurisdiction, with the request that, if necessary, it be considered a petition for certiorari under Section 237 (c) of the Judicial Code.

CHARLES FAHY,
Solicitor General.

In the Supreme Court of Pennsylvania, Western District

No. 201—March Term, 1944

In re: Appeal of Defense Plant Corporation from Assessment of Property in the Township of Borough, County of Beaver, Pennsylvania.

APPEAL OF DEFENSE PLANT CORPORATION

Appeal from the Order of the Court of Common Pleas of Beaver County at No. 320 June Term, 1943

OPINION OF THE COURT

Filed Oct. 31, 1944

LINN, *J.*

The question is, What did Congress mean by the term "real property" in the Act waiving immunity from taxation of certain property owned by government agencies? It is presented by this appeal from the confirmation of a township tax assessment for the triennial period 1942–45. Appellant, Defense Plant Corporation, originally

complained of the entire assessment, which itemized land, buildings and machinery, but at the hearing in the court below conceded the power to tax the land and buildings and denied only the power to tax the machinery.

The parties have agreed that the plant-machinery was "necessary and essential to its [appellant's plant's] existence and operation as a manufacturing plant for aircraft propellers." It was held taxable as real estate pursuant to the General County Assessment Law of May 22, 1933, P. L. 853, 72 PS section 5020-101, providing: "Section 201. Subjects of Taxation Enumerated.—The following subjects and property shall, as hereinafter provided, be valued and assessed, and subject to taxation for all county, city, borough, town, township, school and poor purposes at the annual rate:

"(a) All real estate, to wit: Houses, lands, lots of ground and ground rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, brew-

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The assessment was itemized:

"Nine (9) Acres improved, assessed at $1,100 per acre	$9,900.00
Twenty-four (24) acres, not improved, assessed at $1,000 per acre	24,000.00
Plant building and cafeteria assessed at	338,000.00
Administration Building, assessed at	32,000.00
Boiler House, assessed at	60,000.00
Personnel Building, assessed at	5,000.00
Machinery, assessed at	388,000.00
Total	$856,900.00"

eries, tan yards, fisheries, and ferries, wharves, and all other real estate not exempt by law from taxation."

It has long been the rule in Pennsylvania that "Whether fast or loose, therefore, all the machinery of a manufactory which is necessary to constitute it, and without which it would not be a manufactory at all, must pass for a part of the freehold." *Voorhis* v. *Freeman*,[2] 2 W. & S. 116, 119 (1841). This rule prevails in the majority of the states in which the subject has been considered by the courts, as the cases, cited later, show. Appellant's machinery, being an integrated part of the manufactory, and so, of the freehold, was therefore taxable, as other real property in the township was taxable unless the Congressional immunity did not apply.

The Act[3] provides: "Any and all notes, debentures, bonds, or other such obligations issued by the corporation shall be exempt both as to principal and interest from all taxation (except

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[2] See also, *Patterson* v. *Delaware Company*, 70 Pa. 381; *Titus* v. *Poland Coal Company*, 275 Pa. 431, 119 A. 540; *Commonwealth Trust Company of Pittsburgh* v. *Harkins*, 312 Pa. 402, 167 A. 278; *Pennsylvania Chocolate Company* v. *Hershey Brothers*, 316 Pa. 292, 175 A. 694; *Central Lithograph Company* v. *Eatmor Chocolate Company*, 316 Pa. 300, 175 A. 697; *Roos* v. *Fairy Silk Mills*, 334 Pa. 305, 5 A. 2d 569; *McClure* v. *Atlantic Rock Company, Inc.*, 339 Pa. 296, 14 A. 2d 124.

[3] Approved June 10, 1941, c. 190, sec. 3, 55 Stat. 248, 15 USCA section 610, amending Act of January 22, 1932, c. 8, sec. 10, 47 Stat. 9.

surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except as provided in section 742a (a) of Title 31. The corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. The exemptions provided for in the preceding sentence, with respect to taxation (which shall, for all purposes, be deemed to include sales, use, storage, and purchase taxes) shall be construed to be applicable not ~~only~~ with respect to the Reconstruction Finance Corporation but also with respect to (1) the Defense Plant Corporation, the Defense Supplies Corporation, the Metals Reserve Company, the Rubber Reserve Company, and any other corporation heretofore or hereafter organized or created by the Reconstruction Finance Corporation under section 606b of this title, ~~as amended, to aid~~ the Government of the United States in its national-defense program, (2) the RFC Mortgage Company, the Federal

National Mortgage Association, and any other public corporation heretofore or hereafter organized by or at the instance of the Reconstruction Finance Corporation, and (3) the Disaster Loan Corporation, and any other public corporation which is now or which may be hereafter wholly financed and wholly managed by the Reconstruction Finance Corporation. Such exemptions shall also be construed to be applicable to the loans made, and personal property owned, by the Reconstruction Finance Corporation or by any corporation referred to in clause (1), (2), or (3) of the preceding sentence, but such exemptions shall not be construed to be applicable in any State to any buildings which are considered by the laws of such State to be personal property for taxation purposes."

Our special concern is with the provisions ". . . except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed . . . Such exemptions shall also be construed to be applicable to . . . personal property owned by . . . [Defense Plant Corporation] . . . but such exemptions shall not be construed to be applicable in any State to any buildings which are considered by the laws of such State to be personal property for taxation purposes."

What did Congress intend by the term "real property" in the statute which was designed to

waive immunity in aid of the revenues of local communities in which industrial establishments were engaged in manufacturing defense material? Did it intend "real property" to include the entire "mill or manufactory" (as provided by local law) or only the land and vacant buildings without the mechanical part of the plant?

Two suggestions are made by the parties for determining the intended content of the term real property. The appellant says: "We submit that the primary, universally accepted meaning of 'real property' is, as indicated in the foregoing quotations,[4] land together with such tangible items, generally chattel in nature, as have by intention of the interested parties and by their permanent manner of attachment to the land become incorporated into the land, that is, buildings and fixtures."

We think there is such ambiguity and uncertainty in that statement, that we must reject it on the ground that it does not represent the majority view. Our examination of the decisions dealing with the actual and constructive attachment of machinery to the freehold throughout the states, shows that in a majority[5] of the states, the attach-

[4] The quotations are from 1 Tiffany, Real Property (3d ed. 1939), sections 3 and 10; 52 C. J. p. 1156; *In re Inglis*, 69 Okla. 64, 169 Pac. 1083.

[5] The majority referred to includes the following: *Humes* v. *Higman*, 145 Ala. 215, 40 So. 128; *Southern Cotton Oil Co.* v. *Lowery*, 231 Ala. 119, 163 So. 629; *Fechet* v. *Drake*, 2 Ariz. 239, 12 Pac. 694; *Teater* v. *Good Hope Development Corp.*,

ment to the land may be constructive[6] and need not be physical to the extent that removal will result in serious damage to the remaining freehold. In Ohio, for example, only "slight"[7] attachment is

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86 P. 2d 673 (Cal.); *Cary Hardware Co.* v. *McCarty*, 10 Colo. App. 200, 50 Pac. 744; *Atlantic Refining Co.* v. *Feinberg*, 31 Del. 183, 112 A. 685; *Commercial Fin. Co.* v. *Brooksville Hotel Co.*, 98 Fla. 410, 123 So. 814; *Seedhouse* v. *Broward*, 34 Fla. 509, 16 So. 425; *Cunningham* v. *Cureton*, 96 Geo. 489, 23 S. E. 420; *J. & H. Day Co.* v. *Public Sav. Ins. Co.*, 85 Ind. App. 78, 151 N. E. 361; *Ottumwa Woolen Mills Co.* v. *Hawley*, 44 Iowa 57; *Green* v. *Chicago, R. I. & P. R. R.*, 8 Kan. 611; *Parsons* v. *Copeland*, 38 Me. 537; *Dudley* v. *Hurst*, 67 Md. 44, 8 A. 901; *Anderson* v. *Perpetual B. & L. Ass'n.* 190 A. 747 (Maryland); *Southbridge Sav. Bank* v. *Mason*, 147 Mass. 500, 18 N. E. 406; *Commercial Credit Corp.* v. *Com'th Mtge. etc.*, 276 Mass. 335; *Lyle* v. *Palmer*, 42 Mich. 314, 3 N. W. 921; *Detroit Trust Co.* v. *Detroit City Service Co.*, 262 Mich. 14, 247 N. W. 76; *Merchants National Bank* v. *Stanton*, 55 Minn. 211, 218; *Planters Mfg. Co.* v. *Greenwood Agency*, 168 Miss. 892, 152 So. 476; *Knickerbocker Trust Co.* v. *Penn. Cordage Co.*, 66 N. J. Eq. 303, 58 A. 409; *McRea* v. *Central Nat. Bk.*, 66 N. Y. 489; *Foote* v. *Gooch*, 96 N. C. 265, 1 S. E. 525; *Metropolitan Life Ins. Co.* v. *Kimball*, 94 P. 2d 1101 (Oregon); Pennsylvania cases are cited above; *Metropolitan Life Ins. Co.* v. *Jensen*, 9 N. W. 2d 140 (South Dakota); *Danville Holding Corp.* v. *Clement*, 178 Va. 223, 16 S. E. 2d 345; *Pocahontas Coal & Coke Co.* v. *By-Products Pocahontas Co.*, 112 W. Va. 390, 164 S. E. 504; *Thomsen* v. *Cullen*, 196 Wis. 581, 219 N. W. 439.

[6] An interesting discussion of this subject by the Court of Appeal appears in *Tyne Boiler Works Co.* v. *Overseers*, L. R. 18 Q. B. D. 81 (1887).

[7] *Holland Furnace Co.* v. *Trumbull Sav. & Loan Co.*, 135 Ohio St. 48, 52 (1939). In this case the court said: "While, to make a chattel a fixture, there must be physical annexation of the chattel to the realty, the annexation may be very slight . . ."

required. The evidence in the record shows that some of the machinery in appellant's plant is easily removable; some is bolted to foundations; "hoists, the monorail, or crane runway" appear to be built in and supported by the structural part of the building. For some states, no decisions were found. In some states, statutes provide that certain classes of machinery shall be assessed as real property.[8]

On the other hand, the appellee submits that, in abolishing immunity and conferring the local power of taxation, Congress must have intended the content of the term real property to be determined by the law of the taxing district. In the condemnation proceeding, *U. S. ex rel T. V. A. v. Powelson,* 319 U. S. 266, 63 Sup. Ct. 1047, 1054, the court said at page 279, "Though the meaning of 'property' as used in § 25 of the Act and in the Fifth Amendment is a federal question, it will normally obtain its content by reference to the local law." The rule was applied in *U. S. v. Bechtold Co.,* 129 F. 2d 473 (C. C. A. 8th, 1942) and in *U. S. v. 19.86 Acres of Land,* 141 F. 2d 344 (C. C. A. 7th, 1944), similar cases being referred to in the opinions.

Against the adoption of the local definition of real estate, the appellant refers to several cases:

[8] Vermont, Pub. L. (1933) sec. 586; Utah, Code Ann. (1943) 80-3-1; Kansas, Gen. Stat. (Corrick 1935) sec. 79-102; Rhode Island, Gen. Laws (1938), c. 30, sec. 3.

Carpenter v. *Shaw*, 280 U. S. 363, 50 Sup. Ct. 121; *Lyeth* v. *Hoey, Collector*, 305 U. S. 188, 59 Sup. Ct. 155; and *Morgan* v. *Commissioner*, 309 U. S. 78, 60 Sup. Ct. 424. In the *Carpenter* case it was necessary to determine what Congress meant by the word "lands" in the Act ratifying the Atoka Agreement with certain Indian tribes then in Oklahoma Territory. The Act provided ". . . the lands allotted shall be nontaxable while the title remains in the original allottees." The question was whether oil royalty reserved by allottee-lessors was exempt or was taxable as personal property by the State of Oklahoma and the royalty was held nontaxable. The *Lyeth* and the *Morgan* cases involved the construction of the Federal Revenue Act, in one case the meaning of the word "inheritance" and in the other, the meaning of the term "general power of appointment." It was held that national uniformity in the collection of income and inheritance taxes required the application of the generally understood meaning of "inheritance" and of "general power of appointment," unaffected by local variations from the generally understood meaning of the words. *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, determining what Congress meant by the word "employes" in the Wagner Act, was also referred to. It was held that as the Act was "administered by a national agency, intended to solve a national prob-

lem on a national scale," local definitions of the word must be rejected. Those cases, and others which might be added, illustrate the application of the principle of federal supremacy, a principle not challenged by the appellee. Its submission is that when Congress conferred the power of "local taxation [of real property] to the same extent according to its value as other real property is taxed" without defining real property in the Act, it necessarily intended that all the property within the taxing district considered to be real property, should be taxable; that if this construction was rejected, the machinery constituting part of appellant's plant would be exempt while like machinery of a private individual would be taxed; that one purpose of the Act was to remove such discrimination as had formerly existed, in order that tax burdens might be more equitably distributed.

The brief filed on behalf of Allegheny County states that: "The amending Act of 1941 originated in the Senate as S. 1438 of the 77th Congress, 1st Session. Section 3 of the bill amends Section 10 of the original Act. In commenting on the existing law (i. e., the provisions of Section 10 of the original Act), the report of the Committee on Banking and Currency (S. Rep. No. 292), submitted through Senator Brown, contains the following relevant sentence: 'The only qualification of these exemptions provides that real property of

the Corporation is to be subject to nondiscriminatory State and local taxes.'" In the brief of the appellant it is said that Pennsylvania furnishes an "example of tax diversity." Different taxing districts may have different rates of assessment or none at all; such diversity is not prohibited; what the law prohibits is discrimination within the boundaries of the taxing district. The Constitution of Pennsylvania allows classifications of municipalities, counties, townships, etc., and classification has been made pursuant to that power. For cities of the first class, for example, the law provides that in the ". . . assessment of real estate for taxation, the machinery and tools used in manufacturing in any mill or manufactory shall not be considered or included in determining the value of real estate." Act of June 3, 1915, P. L. 787, 53 PS section 4742. In cities of the second class such property is not taxable for city or school purposes: Act of March 7, 1901, P. L. 20, Art. XIX, section 3, cl. 1, amended by the Act of May 12, 1911, P. L. 287, section 1, 53 PS section 9634. But the mere fact that in some taxing districts certain property is taxable and in others is exempt, is of no consequence in this review because appellant does not contend that there was discrimination against its property in the taxing township. For the same reason it would seem to be immaterial if in some states it may be found unnecessary to raise revenue by taxing such property.

There is difficulty in ascertaining with certainty what Congress meant by the words real property in the statute. There is no federal general common law[9] to which we can turn for aid. In 36 Words and Phrases, p. 221, many varying definitions of real property are given. Dictionaries define it as land, real estate, realty, and the like. Any adequate definition must take account of the doctrines of fixtures and of equitable conversion. We understand appellant's position to be that Congress intended that the content of the term real property should be the view prevailing in the majority of the states that have dealt with the subject of chattels made part of the freehold. The cases cited above in note 5 show that the majority view is contrary to that suggested as the standard. If appellant is correct in suggesting that the Congressional meaning is to be found in the prevailing view among the states, we must hold that the machinery was properly included in the assessment of real estate and entitled to the waiver of federal immunity. If, on the other hand, we accept the appellee's submission that Congress intended that the content of the term real property should be found in the law of the assessing district, the machinery was properly included in the assessment. In either view, we all agree that the appeal fails.

Order affirmed.

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[9] *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 78, 58 Sup. Ct. 817, 822.

U. S. GOVERNMENT PRINTING OFFICE: 1945